U N I T E D S T A T E S	)	
	)	**DEFENSE MOTION**
v.	)	**TO DISMISS ALL CHARGES**
	)	**WITH PREJUDICE**
MANNING, Bradley E., PFC	)	
U.S. Army, (b) (6)	)	
Headquarters and Headquarters Company, U.S.	)	
Army Garrison, Joint Base Myer-Henderson Hall,	)	DATED: 15 March 2012
Fort Myer, VA 22211	)	

RELIEF SOUGHT

1. In accordance with the Rules for Courts-Martial (R.C.M.) 701(g)(3)(D), the Defense moves to dismiss all charges in this case with prejudice.[1]

BURDEN OF PERSUASION AND BURDEN OF PROOF

2. As the moving party, the Defense has the burden of persuasion. R.C.M. 905(c)(2). The burden of proof is by a preponderance of the evidence. R.C.M. 905(c)(1).

WITNESSES/EVIDENCE

3. The Defense respectfully requests this Court to consider the Defense's Motion to Compel Discovery, the Prosecution Response to the Defense's Motion to Compel Discovery, and the Defense's Reply to the Prosecution Response to the Defense's Motion to Compel Discovery.

LEGAL AUTHORITY AND ARGUMENT

A. The Government has Abdicated Wholesale Its Discovery Obligations

4. As the Government is quick to point out, this case is one of the largest and most complex cases in United States military history. It involves hundreds of thousands of pages of classified documents. It involves twenty-two specifications, including one of "Aiding the Enemy." The accused is facing life in prison. All of this and the Government does not understand its basic discovery obligations.

5. For nearly two years, the Government has been representing that it has been diligently searching high and low for *Brady* material. But it does not know what *Brady* material is. It believes that *Brady* is the standard set by the United States Supreme Court, when it is not. The

[1] As the Defense only just became aware of the Government's fatal misunderstanding of the relevant discovery rules on March 8, 2012, the Defense would like to reserve the right to supplement this Motion as necessary.

Brady principle is reflected in military practice in R.C.M. 701(a)(6) and in Army Regulation 27-26, which governs trial counsel's ethical responsibilities. As military courts have recognized over and over, military rules and ethical obligations mandate much broader *Brady* disclosure than Supreme Court's actual 50-year old decision in *Brady v. Maryland*.

6. How could the Government not know that the military has adopted R.C.M. 701(a)(6), along with AR 27-26, as the *Brady* standard? How could the Government have been operating under the wrong standard for almost the past two years? There are no words to justify such an abject failure to understand the military discovery process.

7. The damage assessments, if they say what the Defense believes they say, are classic *Brady* material that has been under the Government's nose this whole time. That the Government does not see this as *Brady* material demonstrates how big of a problem we have. How many other things has the Government reviewed and discounted over nearly the past two years as not constituting *Brady* material that ***was actually Brady material***? Since the Government used the incorrect standard the whole time, there is undoubtedly *Brady* material "out there" that the Government has missed in its reviews.

8. In addition to deliberately withholding *Brady* material, the Government deliberately withheld discovery under R.C.M. 701(a)(2)(A) because it thought that R.C.M. 703 was the correct discovery rule. The Defense has been asking for myriad specific items within the control, custody and possession of military authorities for nearly two years. These items are "material to the preparation of the defense" within the meaning of R.C.M. 701(a)(2)(A). The standard for "materiality" is not a high one. Information or items are material within the meaning of this rule if they would be helpful to the defense in developing its case and formulating its strategy. In not providing the specifically requested discovery, the Government has committed another willful discovery violation, separate and apart from *Brady*.

9. As the Defense discussed in detail in its Reply, the Government failed to acknowledge the existence of R.C.M. 701(a)(6) or 701(a)(2)(A) in its motion. Instead, it focused on R.C.M. 703 (a rule governing production of witnesses and evidence at trial) and the federal *Brady* standard. The Defense cannot fathom how four individual trial counsels detailed to this case could not understand what their discovery obligations are. Either the discovery violations are willful or they are grossly negligent. Either way, the Government's abdication of its basic discovery responsibilities is unconscionable and irreparably prejudicial, mandating that all charges should be dismissed with prejudice.

B. No Remedy Short of Dismissal Can Remedy the Government's Flagrant Discovery Violations

10. The Defense respectfully requests that this Court dismiss all the charges with prejudice. In so asking, the Defense acknowledges that dismissal is a drastic remedy, to be exercised with great caution. However, R.C.M. 701(g)(3)(D) does authorize a Court to grant such a dismissal in extraordinary circumstances. The Rule provides that "[i]f at any time during the court-martial it is brought to the attention of the military judge that a party has failed to comply with this rule, the

military judge may take one or more of the following actions: … (D) Enter such other order as is just under the circumstances." The Defense submits that a dismissal with prejudice is the only order that that would be "just" under these very unique circumstances. A "[d]ismissal of charges with prejudice . . . is an appropriate remedy where the error cannot be rendered harmless." *U.S. v. Lewis*, 63 M.J. 405, 416 (C.A.A.F. 2006) (dismissing all charges with prejudice due to the prosecutor's use of unlawful command influence over the military judge).

11. Federal courts have explicitly recognized that dismissal of charges with prejudice may be an appropriate remedy for a discovery violation. *See United States v. Struckman*, 611 F.3d 560, 577 (9th Cir. 2010) ("Nonetheless, our circuit has recognized that dismissal with prejudice may be an appropriate remedy for a *Brady* or *Giglio* violation using a court's supervisory powers where prejudice to the defendant results and the prosecutorial misconduct is flagrant. We review for an abuse of discretion the district court's decision whether to dismiss the indictment to cure prejudice resulting from such misconduct.")(citations omitted); *United States v. Miranda*, 526 F.2d 1319, 1325 n.4 (2d Cir. 1975) (sanctions which may be imposed against the Government for failure to disclose material available to the defense include "the exclusion or suppression of other evidence concerning the subject matter of the undisclosed material, the grant of a new trial, or, in exceptional circumstances, dismissal of the indictment or the direction of a judgment of acquittal.") (citations omitted); *United States v. Chapman*, 524 F.3d 1073, 1086 (9th Cir. 2008) (although the appropriate remedy for a *Brady* violation will usually be a new trial, "a district court may dismiss the indictment when the prosecution's actions rise . . . to the level of flagrant prosecutorial misconduct.").

12. Military courts have implicitly recognized the power of the trial court to dismiss charges with prejudice for discovery violations. In *Vigil v. Bower*, 1996 WL 233211 (A.F. Ct. Crim. App. 1996), the trial judge ordered new trial for the accused where the prosecution was "extremely negligent" in withholding evidence. The accused petitioned for extraordinary relief on the basis that the charges should have been dismissed with prejudice instead. The Air Force Court of Criminal Appeals denied the petitioner's requested relief, stating that:

> [T]he military judge took prompt and decisive action when she learned, after trial, of the alleged discovery violations. The petitioner takes issue with her conclusion about the government's actions. However, the fact that the petitioner—or even another judge—might have reached a different conclusion does not give this Court reason to direct a different result.

Id. at *2. The "different conclusion" that the court was referring to was the conclusion that charges be dismissed with prejudice, thereby acknowledging that this remedy is at the disposal of the military judge. Thus, it is within the sound discretion of the court to dismiss all charges with prejudice in this case. *See also United States v. Fletcher*, 62 M.J. 175, 178 (C.A.A.F. 2005) (court recognized that "[w]hile prosecutorial misconduct does not automatically require a new trial or the dismissal of the charges against the accused, relief will be granted if the trial counsel's misconduct 'actually impacted on a substantial right of an accused.'" (quoting *United States v. Meek*, 44 M.J. 1, 5 (C.A.A.F. 1996)).

13. We know now that the Government has been playing by the wrong "rules of the game" since the beginning of the case. We know that there is *Brady* material out there, but that the Government does not know what *Brady* material is. We know that there are reports in the control, custody and possession of military authorities, but that the Government does not realize that it has to give them to the Defense. We know that that the Government was literally on the wrong page of the Rules for Court Martial when it denied the Defense's discovery requests for nearly two years.

14. No remedy short of dismissal can fix these problems. If the Court orders the Government to re-conduct discovery applying the correct R.C.M. rules and *Brady* standard, the proceeding will be delayed another two years. The Government has represented that it has diligently conducted searches for *Brady* material and in response to Defense discovery requests since May 2010, when charges were preferred. In one session, trial counsel indicated that he had searched for files within the Department of Agriculture. ***All these searches will need to be conducted again—this time, using the correct rules***. There is no way around it. And there is no conceivable way that these searches can be conducted in a timely manner given how long the original search took. PFC Manning has already been in pretrial confinement for a total of 656 days, with a large portion of that time in solitary confinement, in violation of PFC Manning's Article 13 rights. Any additional delay in this case to re-conduct *Brady* searches from scratch would amount to a *per se* violation of PFC Manning's right to a speedy trial.[2]

15. We cannot pretend that this did not happen. We cannot pretend that the Government did, in fact, know what it was doing this whole time. It did not. Even if the Government undertook to provide the specifically requested items at this point, such a "solution" is not a solution at all. First, the Defense was already supposed to have this discovery by now so that it could integrate this material, if necessary, into its case. This material may have resulted in other leads and theories that the Defense could have explored.[3] Turning the specifically requested items over at such a late date has already prejudiced the Defense's ability to adequately prepare for trial. Second, and more importantly, even if the Government were to immediately provide[4] all the specifically requested items, the Government will still not have complied with its *Brady* obligations. After such flagrant discovery violations, the Government cannot be allowed to circumvent R.C.M. 701(a)(6) simply by providing specifically requested discovery under R.C.M. 701(a)(2)(A).

16. Moreover, the Defense does not know what evidence, *Brady* or otherwise, was destroyed or lost owing to the Government's discovery violations. Evidence that may have existed two years ago may not be in existence today. Had the Government done its job correctly the first time, this material would have been provided to the Defense. The Government will undoubtedly argue that this contention is speculative—that we do not know what information has been lost or destroyed over nearly the past two years. And that is exactly the Defense's point. We don't know what we

[2] The Defense maintains that PFC Manning has ***already*** been deprived of his constitutional right to a speedy trial.
[3] For instance, even if the Defense immediately receives an EnCase copy of the requested hard drives, its forensic experts will need several months to review the material.
[4] We know that the Government, even if ordered, will not immediately provide the requested discovery as it has indicated in its Supplement to the Case Management Order that it requires 45-60 days to coordinate and determine if it will claim privilege over these items under R.C.M. 505.

don't know. But, the reason we don't know is because of the Government's egregious misconduct.

17. The Defense has not located any cases with facts directly analogous to the instant case—this is likely because no other trial counsel in reported history has so completely missed-the-mark on its discovery obligations. Normally, in cases involving discovery violations, trial counsel has withheld one or two particular items of discovery from the defense, which the defense then asserts post-trial was prejudicial to a substantial right of the accused. *See, e.g., United States v. Adens*, 56 M.J. 724 (A. Ct. Crim. App. 2002). To the Defense's knowledge, there is no case where the Government ***just did not understand how basic discovery works***.

18. With that said, there is precedent for a court to dismiss charges where the prosecution has committed willful, egregious or grossly negligent discovery violations. In *United States v. Koubriti*, 336 F. Supp. 2d 676 (E.D. Mich. 2004), the first case prosecuted and tried in the aftermath of September 11th, the defendant alleged that the government had not fully met its discovery obligations under *Brady* and *Giglio* and that it had engaged in a pattern of misconduct. After the defendants were convicted of charges of, *inter alia*, conspiracy to provide material resources to terrorists, the defense discovered that "at least one document [ ] was intentionally not disclosed but unquestionably should have been." *Id.* at 678. After being made aware of this issue, the court ordered a wholesale review of the government's files, a review that took well over six months.[5] The review revealed a pattern of prosecutorial discovery violations:

> As thoroughly detailed in the Government's filing, at critical junctures and on critical issues essential to a fair determination by the jury of the issues tried in this case, the prosecution failed in its obligation to turn over to the defense, or to the Court, many documents and other information, both classified and non-classified, which were clearly and materially exculpatory of the Defendants as to the charges against them. Further, as the Government's filing also makes abundantly clear, the prosecution materially misled the Court, the jury and the defense as to the nature, character and complexion of critical evidence that provided important foundations for the prosecution's case.
>
> As the Government's filing also makes clear, these failures by the prosecution were not sporadic or isolated. Rather, they were of such a magnitude, and were so prevalent and pervasive as to constitute a pattern of conduct, that when all of the withheld evidence is viewed collectively, it is an inescapable conclusion that the Defendants' due process, confrontation and fair trial rights were violated

[5] The court indicated at p. 678:

> It is a fair statement that at the inception of this review no one, least of all the Court, could have anticipated the nature and scope of the issues—not to mention the sheer number of documents—that would ultimately be involved in this investigation. (Just one complicating factor, for example, was the necessity for the Court to review many classified documents and for the Court to seek security clearance for its staff and defense counsel, a time consuming process.) Certainly, no one could have imagined last winter that it would be almost autumn before the review was completed and a resolution at hand.

> and that the jury's verdict was infected to the point that the Court believes there is at least a reasonable probability that the jury's verdict would have been different had constitutional standards been met.

Id. at 680-81.

19. The judge then stated "one might well ask why and how this happened." *Id.* at 861. The Court offered the following comments:

> However, it is sufficient to say here that two things are obvious to the Court from both its review of the Government's filing, as well as its own independent review of all the documents and evidence presented to it. First, the prosecution early on in the case developed and became invested in a view of the case and the Defendants' culpability and role as to the terrorism charges, and then simply ignored or avoided any evidence or information which contradicted or undermined that view. In doing so, the prosecution abandoned any objectivity or impartiality that any professional prosecutor must bring to his work. It is an axiom that a prosecutor must maintain sufficient distance from his case such that he may pursue and weigh all of the evidence, no matter where it may lead, and then let the facts guide him. That simply did not happen here.
>
> More broadly, when viewed against the backdrop of the September 11 attacks upon our Nation and the public emotion and anxiety that has ensued, the prosecution's understandable sense of mission and its zeal to obtain a conviction overcame not only its professional judgment, but its broader obligations to the justice system and the rule of law.

Id. Accordingly, the government in that case moved to dismiss the conspiracy charges. The court granted the motion, stating that "the Government's decision could not have been an easy one and, no doubt, is one that will come in for criticism and second-guessing from some quarters. However, it is the right decision." *Id.* at 679.

20. Like the *Koubriti* case, this case is one that is high-profile and has attracted a great deal of domestic and international scrutiny. No doubt, the Government in this case feels compelled to convict the accused and make an example out of him. But, as the court in *Koubriti* points out, this does not mean that the Government can ignore its "broader obligations to the justice system and the rule of law." *See id.* at 861. In this case, it has done just that.

21. In *United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008), the Ninth Circuit affirmed the district court's decision to dismiss the indictment due to reckless violations of the government's discovery obligations in that case. The Ninth Circuit stated:

> We have never suggested, however, that "flagrant misbehavior" does not embrace reckless disregard for the prosecution's constitutional obligations. Here, although the case involved hundreds of thousands of pages of discovery, the AUSA failed to keep a log indicating disclosed and nondisclosed materials.

> The AUSA repeatedly represented to the court that he had fully complied with *Brady* and *Giglio,* when he knew full well that he could not verify these claims. When the district court finally asked the AUSA to produce verification of the required disclosures, he attempted to paper over his mistake, offering "in an abundance of caution" to make new copies "rather than find the record of what we turned over." Only when the court insisted on proof of disclosure did the AUSA acknowledge that no record of compliance even existed. Finally, the dates on many of the subsequently disclosed documents post-date the beginning of trial, so the government eventually had to concede that it had failed to disclose material documents relevant to impeachment of witnesses who had already testified. In this case, the failure to produce documents and to record what had or had not been disclosed, along with the affirmative misrepresentations to the court of full compliance, support the district court's finding of "flagrant" prosecutorial misconduct even if the documents themselves were not intentionally withheld from the defense. We note as particularly relevant the fact that the government received several indications, both before and during trial, that there were problems with its discovery production and yet it did nothing to ensure it had provided full disclosure until the trial court insisted it produce verification of such after numerous complaints from the defense.

Id. at 1085. The court expressed particular concern with the government's position on appeal. On appeal, the government had tried to argue that the withheld material was not, in fact, *Brady* material. The court was disheartened by the government's tactics on appeal, stating that "[the government] still has failed to grasp the severity of the prosecutorial misconduct involved here, as well as the importance of its constitutionally imposed discovery obligations. Accordingly, although dismissal of the indictment was the most severe sanction available to the district court, it was not an abuse of discretion." *Id.* at 1088.

22. There are several other cases where courts dismissed charges in order to remedy egregious discovery violations. In *United States v. Lyons*, 352 F. Supp. 2d 1231 (M.D. Fla. 2004), the court dismissed with prejudice the charges against the defendant because of the prejudice caused by the Government's numerous and flagrant *Brady* and *Giglio* violations. The court noted that although dismissal was an unusual remedy, it was required in this case because "the Government [ ] perpetuated an unjust deprivation of [defendant's] liberty throughout [the] case . . . despite obvious concerns about the Government's investigative and prosecutorial methods, despite actual notice of *Brady* and *Giglio* problems, and with unconscionable delay and prejudice to [the defendant] as well as the judicial process." *Id*. at 1251. In another case, *United States v. Dollar*, the trial court dismissed the conspiracy charges with prejudice given that the "defense counsel ha[d] been unrelenting in their effort to obtain Brady materials" and "[t]he United States' general response ha[d] been to disclose as little as possible, and as late as possible." 25 F. Supp. 2d 1320, 1332 (N.D. Ala. 1998). The court recognized that "[i]n its determined effort to convict the defendants, the United States ha[d] trampled on their constitutional right to *Brady* materials." *Id.* The words could not be more apt if spoken about the Government in this case.

23. There is no military authority directly on point. Again, this is because there likely has not been such a flagrant abdication of discovery responsibilities by trial counsel. However, military appellate case law reveals that our courts take the issue of discovery violations very seriously and recognize the inherent authority of the trial judge to fashion appropriate remedies. *See United States v. Trigueros*, 69 M.J. 604, 608 (A. Ct. Crim. App. 2010) (military judge fashioned a remedy that precluded the government from presenting any victim impact evidence or any aggravation evidence in its sentencing case in chief).

24. In *United States v. Adens*, 56 M.J. 724 (A. Ct. Crim. App. 2002), the Army Court of Criminal Appeals set aside the findings of guilty and the sentence in a case where the prosecutor withheld discovery from the defense. The defense had specifically requested certain physical discovery under R.C.M. 702(a)(2)(A); the government, despite having this evidence in its possession, did not provide the requested discovery because it wanted to gain the maximum tactical advantage from this evidence and use it on rebuttal. *Id.* at 733-43. On appeal, the government conceded that this violated R.C.M. 701(a)(2)(A), but argued that no prejudice ensued. The appellate court disagreed. Importantly, it found that equal opportunity to obtain evidence is a "substantial right of the accused" within the meaning of Article 59(a), independent of the due process rights provided under *Brady*. It held that when a trial counsel fails to disclose information pursuant to a specific request or when prosecutorial misconduct is present, the evidence is considered material unless the government can show that failure to disclose was harmless. *Id.* at. 733. While the trial judge attempted to fashion a remedy (i.e. the government would not be able to present "any evidence" concerning the withheld materials), she did not go far enough. *Id.* at 734. In particular, the trial judge "failed to instruct the members to disregard the testimony about [the evidence] by [the special agent] on redirect examination." *Id.* The court thus set aside the findings of guilt and the sentence, stating:

> Professional advocacy may be aggressive, but it does not include making personal attacks on one's adversary. As a result of the personal animosity between the principal litigators, trial counsel lost his focus and forgot that "[a]s a representative of a sovereign, a prosecutor's duty is not to win the case, but to ensure that justice is done." "The purpose of a criminal trial is truth finding within constitutional, codal, Manual, and ethical rules." Counsel must always be mindful that the Rules of Professional Conduct applicable to Army courts-martial provide that a lawyer shall not "unlawfully obstruct another party's access to evidence ... **having potential evidentiary value.**" AR 27–26, Rule 3.4 (Fairness to Opposing Party and Counsel) (emphasis added); The comment to Rule 3.4 explains:
>
> The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.
>
> Considering the purposes behind the broad military discovery rule and the intent of the rules of professional responsibility, the successful trial counsel will

> engage in full and open discovery at all times and will scrupulously avoid gamesmanship and trial by ambush, which have no place in Army courts-martial.

Id. at 735 (citations omitted)(emphasis in original).

25. In *United States v. Jackson*, 59 M.J. 330 (C.A.A.F. 2004), the Court of Appeal for the Armed Forces set aside the findings and sentence in a case where the government committed a discovery violation under R.C.M. 701(a)(2)(B). In that case, the defense had an ongoing discovery request for information related to quality control at the laboratory that tested the accused's specimen in a prosecution for methamphetamine. The court concluded that the failure to turn the report over to the accused deprived the defense of information that could have been considered by the members as critical on a pivotal issue in the case—the reliability of the laboratory's report that Appellant's specimen produced a positive result. *Id.* at 335-36. *See also United States v. Webb*, 66 M.J. 89 (C.A.A.F. 2008) (military judge did not abuse discretion in ordering new trial where government did not disclose impeaching evidence concerning witness who was the assigned observer of accused's provision of urine sample for drug testing).

26. The findings and sentence were also set aside in *United States v. Stewart*, 62 M.J. 668 (A.F. Ct. Crim. App. 2006) owing to the government's discovery violations. *Stewart* involved a prosecution where the alleged victim claimed that she had been drugged and raped. The trial counsel requested, *inter alia*, all of the victim's medical records and any evidence that might tend to negate the guilt of the accused (i.e. *Brady* material). The defense was told that it was provided with the "relevant portions" of the medical records. *Id.* at 669. After a discovery dispute over the relevant medical records, the judge reviewed the records *in camera* and determined that about 24 pages (20% of the total) would be released to the defense. *Id*. at 670. At trial, the trial counsel referred to documents that had not been released to the defense, at which time the defense learned of other important evidence (in particular, that the victim had taken several medications that could explain her symptoms on the night of the alleged rape). The defense moved for a mistrial. The military judge did not grant a mistrial, but instead suggested a number of options to alleviate the impact of the tardy disclosure. The accused was convicted and sentenced. On appeal, the court concluded that "[t]he pages withheld by the government and the military judge contained evidence that could undermine every part of the government's case." *Id.* at 671. The court continued:

> We are sympathetic to the difficulties experienced by trial counsel in dealing with sensitive medical information. DW's reluctance to permit the appellantss counsel access to her records undoubtedly played a significant part in the trial counsel's decision to withhold them. That reluctance, however, did not amount to a bar against their release. Trial counsel still must examine evidence in the possession, custody, or control of the military authorities, and disclose information favorable to the defense.
>
> While it is apparent trial counsel here made a conscientious effort to balance their discovery obligations against DW's privacy concerns, the presence or absence of good faith is not the issue. "The suppression by the prosecution of

> evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Trial counsel should not have withheld the records.
>
> … Whenever the government withholds evidence, it assumes the risk that—as here—the evidence will turn out to be material and favorable to the defense.

Id. at 671-72.

27. Unfortunately, there are far too many of these discovery and *Brady* violations in our military justice system. *See United States v. Trigueros*, 69 M.J. 604, 608 (A. Ct. Crim. App. 2010) (government failed to disclose medical records of health counseling sessions which victim attended following alleged rape); *United States v. Roberts*, 59 M.J. 323 (C.A.A.F. 2004) (military judge erred in not ordering government to disclose to the defense information about lead investigator which could have been used for impeachment); *United States v. Behenna*, 70 M.J. 521 (A. Ct. Crim. App. 2011) *review granted* 2012 CAAF LEXIS 61 (January 13, 2012).

28. The Government does not get a "do over" in this case. The Government has so completely misapprehended its professional and constitutional obligations that the case cannot be saved. These are, as one judge remarked, "self-inflicted wounds." *United States v. Lawrence*, 19 M.J. 609, 614 (A.C.M.R. 1984). They could have easily been avoided if the Government had played fairly and within the bounds of zealous professional advocacy. Here, the Government appears to have committed the same fatal error as the prosecutors in *Koubriti*: the Government "abandoned [the] objectivity or impartiality that any professional prosecutor must bring to his work." 336 F. Supp. 2d at 681. In so doing, the Government has caused irreparable prejudice to the accused.

CONCLUSION

29. For these reasons, and for the reasons outlined in the Defense's Reply to the Government's Response to the Defense Motion to Compel Discovery, and in accordance with the Rules for Courts-Martial (R.C.M.) 701(g)(3)(D), the Defense moves to dismiss all charges in this case with prejudice.

Respectfully submitted,

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